



"Excellent overview with knowledgeable, articulate speakers. I would recommend it to both experienced counsel and counsel new to the field."

Neil Robertson, City Solicitor, City of Regina

*The Canadian Institute's
10th Annual*

PROVINCIAL / MUNICIPAL GOVERNMENT LIABILITY

The Most Comprehensive Coverage of the Most Critical Issues for 2004

February 19 and 20, 2004

Four Seasons Hotel, 21 Avenue Road, Toronto, Ontario



CONFERENCE CO-CHAIRS

J. Murray Davison, Q.C.
Paterson MacDougall

Ralph G. Hildebrand
Deputy City Solicitor
City of Surrey, British Columbia

Plus! Changing limitations laws: are you ready? A national panel will discuss the implications for jurisdictions across Canada.

Get practical information from leading legal experts, including:

- The impact of downloading on road maintenance liability: the fallout from *Davis v. Grand* and *Regional Municipality of Niagara v. Niagara Falls*
 - An update on police liability: strip searches, racial profiling and high speed chases
 - How to defend city councillors against actions combining negligence and defamation after *Haskett v. Equifax Canada*
 - How to meet new standards of care in building inspection and environmental remediation
 - How to insure municipalities in an increasingly restrictive market: the latest on pooling, self-insurance and reinsurance
 - An update on occupiers' liability, from sidewalks to skateboard parks
- And much more!

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Why Do So Many City Solicitors, Provincial/Municipal Lawyers, and Insurance Professionals From Across Canada Attend This Event Every February?

Because this is **the** annual event that government advisors know they can rely on for the most comprehensive coverage of the most critical liability issues.

This year, highway and road liability was an area that saw major change. A recent court decision has called into question the guard rail defence, while another ruling is setting new standards for sight triangles at intersections. Police liability ranks as another top priority, with changes to standards for negligent investigation and damages for Charter breaches. And everyone's talking about defamation liability: find out how one case is testing the defence of qualified privilege for municipal officials, while another allows litigants to combine negligence and defamation actions in one proceeding.

And that's not all. This year's conference includes new sessions on insurance and disaster liability, pressing concerns when so many municipalities are coping with natural and man-made emergencies. Also included is a session on another growing phenomenon: liabilities arising from the creation of urban aboriginal reserves. A national panel will give you the latest on changes to limitations laws across the country. And, as always, we bring you comprehensive coverage of the full range of traditional liability hotspots: negligent building inspection, slip and fall, construction, environmental liability, and much, much more!

Now in its 10th highly successful year, **The Canadian Institute's** Provincial/Municipal Government Liability Conference delivers the information and analysis you need to stay on top of emerging issues, avoid perennial pitfalls, and anticipate new developments and trends. Get practical, up-to-date coverage of all key issues, including:

- Whether adherence to minimum road maintenance standards is really an absolute defence against liability
- How to guard against liability in the event of disaster, from public utility failures to terrorist attacks
- The impact of *Gibbs v. Edmonton*: how the courts distinguish between policy and operational decisions in matters of building inspection
- The latest word on environmental liability: how should municipalities remediate and transfer contaminated land?
- How to avoid construction liability, from the tendering process to public-private partnerships

Don't miss this opportunity to network with the experts and with your colleagues from across Canada. Mark your calendar and reserve your space today by calling **1-877-927-7936** or in Toronto **416-927-7936** or visiting our website at **www.CanadianInstitute.com**. We look forward to seeing you at the conference.

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Thursday, February 19, 2004

8:00 Registration Opens — Coffee Served ☕

9:00 **Opening Remarks From the Co-Chair**

J. Murray Davison, Q.C.
Barrister & Solicitor
Paterson MacDougall

9:10 **The Driving Forces of Change:
New Developments in Highway
and Road Liability**

Peter K. Foulds
Barrister & Solicitor
Miller, Thomson LLP

David Boghosian
Barrister & Solicitor
Paterson, MacDougall

Highways and roads remain the number-one liability concern for municipalities — and with good reason. Legislative changes and recent caselaw have delegated more responsibility to municipalities than ever before. Get all the latest information in this critical session.

- Downloading and transfers of liability from province to municipality: the impact of *Davis v. Grand* and *Regional Municipality of Niagara v. Niagara Falls*
- The new *Ontario Municipal Act*: is adherence to minimum maintenance standards really an absolute defence?
- Record-keeping obligations: how best to document municipal maintenance
- Road visibility: to light or not to light?
- Sight triangles at intersections: does *Osborne v. County of Bruce* set different standards for city and country?
- Road signage: what is enough?
- Is there still a guard rail defence after *Talbot v. Gan*?
- Post-accident improvements: will the evidence be used against you?

10:25 **Networking Refreshment Break**

10:40 **Police Liability: Greater
Risks, Growing Lawsuits**

C. Kirk Boggs
Partner, Lerner

- Liability for negligent investigation since *Proulx v. A.G. Quebec*
- High speed chases: what is the extent of the duty of care?
- Excessive force: how is it defined now?
- Racial profiling: new grounds for liability?
- False arrest and malicious prosecution: defence strategies for police counsel
- The dilemma of strip searches: balancing the accused's right to privacy with protection of police personnel
- Reasonable grounds for arrest: the latest standards
- Courts' changing attitudes toward police liability: are awards on the increase?
- Damages for Charter breaches: impact of *King v. Brantford Police Services Board*

11:30 **Elected Officials and Municipal
Employees: Defending Against Liability
for Defamation, Negligence and
Fraudulent Misrepresentation**

David T. McKnight
Partner
Alexander Holburn Beaudin & Lang

Charles M. Loopstra, Q.C.
Partner
Loopstra Nixon LLP

Heightened media scrutiny and recent court decisions are making politicians and municipal personnel more vulnerable to claims for slander, defamation and fraud. In this key session, two seasoned practitioners teach you how to avoid liability for this booming breed of lawsuits.

- The impact of *Haskett v. Equifax Canada*:
 - does *Spring v. Guardian Assurance plc* now apply in Canada?
 - can plaintiffs combine negligence and defamation in one action?
 - what are the implications for municipalities?
- The extent of the defence of qualified privilege: *P.G. Restaurant Ltd. v. Northern Interior Regional Health Board*
- The duty to speak up: the impact of *Moin v. Blue Mountain (Town)*
- Fraud claims against councillors: how municipalities can defend against them
- *Santa v. The City of Thunder Bay*: what happens when a municipality is sued by its own councillor to recover legal fees?

12:45 **Networking Luncheon for
Delegates and Speakers** 

2:00 **Critical Changes to Limitations:
A National Overview**

Ralph G. Hildebrand
Deputy City Solicitor
City of Surrey, British Columbia

Brian J.E. Brock, Q.C.
Barrister and Solicitor
Dutton Brock LLP (Toronto)

David I. Marr
Barrister and Solicitor
Campbell Marr (Winnipeg)

This special cross-Canada panel tells you everything you need to know about limitation periods — from new legislation to the latest caselaw. In this can't-miss session, learn how the discoverability principle is increasingly making limitations periods more flexible — and how to defend against this challenge.

- Across Canada: the rise of discoverability and how to respond
- The typical claim and defences
- Ontario: the new *Limitations Act*
 - what are the new rules?
 - what has been retained?
 - is it retroactive?
 - how it affects all levels of government

Special Panel

- Manitoba: recent changes to *The Limitation of Actions Act*
 - legislative v. judge-made discoverability rules
 - what are the implications for other provinces?
- British Columbia: the implications of *Armstrong v. District of West Vancouver*
 - postponement provisions of the BC *Limitation Act* and their effects
 - the consequences of upholding a thirty-year prescription period

Friday, February 20, 2004

3:15 Networking Refreshment Break

3:30 Public Facilities: How to Play It Safe and Stay Out of Court

Bruno De Vita
Partner
Alexander Holburn Beaudin & Lang

The story is all too familiar: on a hot summer day, a dive off a city dock into shallow water results in a paralyzing accident for the diver. But should it lead to liability when the municipality posted a dozen "no diving" signs? For the Supreme Court of British Columbia in a soon-to-be-released decision, the answer was yes. Find out more about the implications of that case for municipalities across Canada, as well as other recent legal developments in this important session.

- How great is a municipality's duty to warn in the case of diving hazards?
- What standards of care apply now?
- New facilities, new challenges: potential liabilities of skateboard parks
- Hockey arenas, flying pucks — and growing lawsuits
- Unmanned facilities: are waivers the answer?
- Sidewalk slip and falls: new developments and caselaw
- Municipal alcohol policies: the latest word
- The changing use of parks and green spaces — and how it affects liability
- Providing quality of life while guarding against liability: how municipalities are meeting the challenge

4:15 Building Inspection: Groundbreaking Developments for 2004

Diana Dimmer
Director, Litigation
City of Toronto

- *Gibbs v. Edmonton*: its implications across Canada
- Operational and policy decisions in the building area
- When does a municipality have a duty to warn?
- How can municipalities meet the standard of care?
- The new Ontario *Building Code Act* and regulations: potential risks and how to avoid them
- The latest word on joint and several liability issues
- Simple steps for building inspectors to minimize liability

**5:00 Co-Chair's Recap
Conference Adjourns**

8:00 Registration Opens — Coffee Served ☕

9:00 Opening Remarks From the Co-Chair

Ralph G. Hildebrand
Deputy City Solicitor
City of Surrey, British Columbia

9:10 From Spills to Landfills: Overcoming New Environmental Liabilities

Marc McAree
Partner
Willms & Shier Environmental Lawyers

Juli Abouchar
Willms & Shier Environmental Lawyers

- Landfill closure and clean-up: due diligence and defending prosecutions
- Hidden treasures:
 - defending civil actions by residents for contamination from municipal operations
 - do municipalities have to practice green demolition?
- Remediation and transfer of contaminated land: the municipal role and due diligence
- New Brownfields regulations to protect municipalities: 'assess before you possess'
- *Nutrient Management Act, 2002*
 - building permits and applicable law: municipalities and CBOs on the firing line
 - which by-laws will survive the NMA?
 - how can municipalities still regulate intensive livestock operations?
- *Safe Drinking Water Act, 2002*
 - standards of care: what are the implications of failure to exercise control?
 - best management practices: can small municipalities afford not to use them?

10:25 Networking Refreshment Break

10:40 Municipal Insurance: New Strategies for a Changing Market

Nancy Chambers
Risk Manager
Waterloo Region Municipalities Insurance Pool
First Vice President, Risk and Insurance Management Society

Bruno De Vita
Partner, Alexander Holburn Beaudin & Lang

In an age of increasing premiums, rising deductibles and shrinking reserves, municipalities are having a harder time obtaining insurance coverage. The result is an increased vulnerability to liability claims. When a municipality can't get insurance, what are its options? Learn the latest strategies for coping in a complex marketplace.

- The anatomy of today's municipal insurance policy
 - what is basic coverage?
 - the difference between claims made and occurrence policies
 - what constitutes an "accident"?
 - key exclusions

- Coverage opinions: a growth area for lawyers
- What to do when you can't get coverage
- The Kitchener-Waterloo experience with pooling and self-insurance
- The reinsurance market: how it works and how to access it
- Analyzing risk: how to ensure your municipality qualifies for insurance
- Changing reserve levels: are we following American trends?
- Trends in personal injury payment: what are the actions? What are the awards?

12:00 Networking Luncheon for Delegates and Speakers



Special Luncheon Address

Aboriginal Self-Government and the Urban Reserve: Liability Concerns for Municipalities and How to Address Them

John D. Weston

Founding Member, Access Law Group

Across Canada, more and more municipalities are creating urban reserves for their native populations. These areas allow aboriginal Canadians and their businesses to benefit from tax exemptions and other rights under the federal Indian Act, and engage in limited forms of self-government. With close to 50% of Canada's native population living in cities and towns, demand for urban reserves is expected to grow, creating new potential liabilities for municipalities. Get a heads-up on what your city or town needs to know about this emerging area.

1:45 Planning for Disaster: From Hydro Blackouts to Hurricanes

Charles M. Loopstra, Q.C.
Partner, Loopstra Nixon LLP

Sarah E. Roberts
Vice President, In Tech Risk Management Inc.

This year Canada has seen more than its share of calamities: the SARS epidemic, a massive power failure, devastating forest fires, and killer storms. When disaster strikes, what liabilities can result for municipalities? Find out how just how prepared your municipality has to be — and prevent a natural disaster from becoming a financial one.

- Fires, floods and other natural disasters: how prepared do your emergency services have to be? What are the trends in liability?
- Fire marshals' guidelines and responsibilities: recent revisions
- Public utilities failures: can municipalities end up on the hook?
- Litigation trends: who's being held liable for what
- Building or defending your case: what are the documentation requirements?
- Business continuity: how to keep municipal government going in the face of disaster
- Foreseeing the unforeseeable: what disasters can you insure against? What disasters do you have to self-insure?

- Terrorism insurance: do the costs outweigh the benefits? Who's purchasing it? What is the price tag?
- Public relations: how good PR can play in the face of disaster

3:00 Networking Refreshment Break

3:15 Building Foundations for a Good Defence: Avoiding Municipal Construction Liability

Carey Thomson
Manager of Corporate and Commercial Law
City of Ottawa

- Avoiding liabilities in the tendering process
 - taking control of the risks
 - managing claims by contractors
 - municipal liability for delayed construction
- Construction on contaminated sites: how the building permit process can result in municipal liability
- The pre-contract process: changing specs without creating lawsuits
- Public-private partnering: avoiding the pitfalls
- Architects' insurance limits: using alternate contracts to ensure full coverage
- Ontario's Superbuild fund and its implications for municipalities

**4:00 Co-Chairs' Closing Remarks
Conference Concludes**

WHAT PAST DELEGATES HAVE SAID ABOUT THIS CONFERENCE:

"A very useful conference... Provides good annual update on the law as it relates to many areas of immediate and ongoing concern to Canadian municipalities."

Robert J. Burse, Senior Legal Counsel, City of St. John's

"Comprehensive, well organized, capable speakers, good material."

J. Feehely, Partner, Feehely, Gastaldi

"Very informative, current, topical."

Sara Runnalls, Account Manager, Jardine Lloyd Thompson

A MUST-ATTEND EVENT FOR:

- Provincial and Municipal Legal Counsel
- Plaintiff and Defence Lawyers
- Risk Managers
- CAOs
- City Clerks
- Insurance Adjusters and Representatives
- Provincial and Municipal Government Officials
- MPPs, Mayors and Councillors

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10th Annual

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